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IN THE SUPREME COURT OF THE STATE OF MONTANA

PR 23-0496

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IN THE MATTER OF AUSTIN  
MILES KNUDSEN,

An Attorney at Law,

Respondent.

**ODC'S SUPPLEMENTAL BRIEF  
IN RESPONSE TO THE COURT'S  
MARCH 12, 2025, ORDER**

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Under section 2-16-501(7), MCA, the office of the Attorney General becomes vacant upon “his ceasing to discharge the duty of his office for the period of 3 consecutive months.” Considering the brief and transient inability to practice law a 90-day suspension would entail, which would not necessarily constitute three consecutive months, the Court should conclude that a 90-day suspension of Respondent would not cause the office of the Attorney General to become vacant under section 2-16-501(7).

Unfortunately, this Court has not previously construed the impact of a suspension from the practice of law under section 2-16-501(7). *Cf. Gullickson v. Mitchell*, 113 Mont. 359, 126 P.2d 1106 (1942) (holding that the Attorney General’s absence for military service was controlled by, among other statutes, the predecessor to § 2-16-501(7), MCA (§ 511, R.C.M. 1935) and did not run afoul of the provisions of the predecessor to Mont. Const. Art. 6, § 6 (which controls permanent vacancies)).

The temporary nature of a 60-day suspension of an elected Oregon county district attorney did not lead to a vacancy of that office in *State ex rel. Rosenblum v. Nisley*, 367 Or. 78, 473 P.3d 46 (2020). There, respondent Nisley was the Wasco County District Attorney. The Oregon Supreme Court concluded that he had committed ethical violations and imposed a 60-day suspension. When Nisley’s suspension expired, he secured reinstatement to active Oregon Bar membership, and he claimed the right to complete his term as District Attorney. The Attorney General,

however, insisted that Nisley was no longer the lawful District Attorney because the office became vacant by reason of Nisley's 60-day suspension. 473 P.3d at 47.

In a *quo warranto* proceeding brought by the Attorney General, the Oregon Supreme Court disagreed, noting that Nisley's change of status with respect to his ability to practice law was transient, his right to be reinstated to active membership in the Oregon State Bar was assured, and the interruption of his ability to practice law was brief—not only in absolute duration but also in relation to the range of potential disciplinary suspensions. Nisley's "brief and transient inability to practice law was not what the legislature intended to describe with the phrase 'ceases to possess' a qualification for holding office, within the meaning of ORS 236.010(1)(g)." *Id.* at 55.

Although the language of Oregon's vacancy statute is different from Montana's, similar circumstances exist here. A 90-day suspension of Respondent would not cause the office of the Attorney General to become vacant within the meaning of §2-16-501(7), MCA. That is due in significant part to the nature of the suspension the Court may impose.

The potential sanctions for an attorney who has violated the Rules of Professional Conduct range from probation to disbarment and include a suspension for a definite period or for an indefinite period with a fixed minimum term. Montana Rules for Lawyer Disciplinary Enforcement (MRLDE) 9(A). Under MRLDE 29(A),

a lawyer suspended for no more than six months is automatically reinstated to the practice of law upon filing the requisite affidavit of compliance. By contrast, a lawyer suspended for more than six months must petition for reinstatement. MRLDE 29(B). If the Court were to impose a 90-day suspension here, the Respondent's right to be reinstated would be automatic, because he would have been suspended for less than six months. That transient and brief inability to practice law is not necessarily one that will last three consecutive months.

First, the Court has the discretion to stagger the dates of suspension to avoid any impact on the Attorney General's ability to discharge the duty of his office for a period of "3 *consecutive* months" under §2-16-501(7), MCA. Nothing in the Rules or the Commission's recommendation specifies that a 90-day suspension must be served on consecutive days or within consecutive months. MRLDE 9(2) defines "suspension" as "the temporary or indefinite termination of the privilege to practice law in this state...." Under MRLDE 31, "[o]rders imposing discipline shall be effective immediately upon entry *unless the Adjudicatory Panel or the Supreme Court specifies otherwise in the order*" (emphasis added).

Second, under the same Rules, even if the Court orders a suspension of 90 *consecutive* days, depending on the suspension effective date that the Court orders, such a suspension may or may not constitute "3 consecutive months" within the scope of §2-16-501(7), MCA. Under §1-1-301, MCA, three months does not mean

90 days, and 90 days does not mean three months. Three months means three calendar months, not a specified number of days. §1-1-301(3), MCA. *See also City of Helena v. Grove*, 2017 MT 111, ¶ 4, 387 Mont. 378, 394 P.3d 189 (citing *State v. Chesarek*, 1998 MT 15, ¶ 10, 287 Mont. 215, 953 P.2d 698; *accord State v. Hayes*, 1998 MT 14, ¶ 11, 287 Mont. 210, 953 P.2d 700 (citing Black’s Law Dictionary 1007 (6th ed.1990))).

The Commission’s recommendation is not a suspension for three *months* but for *90 days*. Thus, even if the Court orders a suspension of 90 consecutive days, by specifying a start date within certain calendar months, there will not be a suspension of “3 consecutive months” under §2-16-501(7), MCA. For example, a 90-day consecutive suspension of Attorney General Knudsen starting August 1 would terminate October 29, constituting a suspension of 90 consecutive days but *not* a suspension of three consecutive *months*. Under MRLDE 29(A), on the 91<sup>st</sup> day (under this example, October 30), Attorney General Knudsen would be automatically reinstated upon his filing the requisite affidavit. That would not be a three-month vacancy. The same scenario is possible with a start date in March, May, or July.

Under either scenario, such a 90-day suspension of Attorney General Knudsen would be a brief and transient inability to practice law and not what the Legislature

intended to describe with the phrase “ceasing to discharge the duty of his office for the period of 3 consecutive months” pursuant to §2-16-501(7), MCA.

DATED this 19<sup>th</sup> day of March 2025.

OFFICE OF DISCIPLINARY COUNSEL

/s/ Timothy B. Strauch

Timothy B. Strauch, Special Counsel

*Office of Disciplinary Counsel*

## **CERTIFICATE OF COMPLIANCE**

I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 989 words, excluding the cover page and this Certificate.

/s/ Timothy B. Strauch

## CERTIFICATE OF SERVICE

I, Timothy B. Strauch, hereby certify that I have served true and accurate copies of the foregoing Brief - Supplemental to the following on 03-19-2025:

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